

## Office of the Secretary, Interior

## § 4.109

(b) *The Government.* Department or Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney.

### § 4.107 Pleadings.

(a) *Complaint.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and one copy of a complaint setting forth simple, concise, and direct statements of each claim, alleging the basis with appropriate reference to contract provisions for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Letter size paper should be used for the complaint and for all other papers filed with the Board. Where the appeal arises out of a contract made with the Department of the Interior, a copy of the complaint shall be served by appellant upon the Department counsel if known, otherwise, upon the Solicitor, U.S. Department of the Interior, C Street, between 18th and 19th Streets, NW., Washington, DC 20240. Where the appeal arises out of a contract made with an agency other than the Department of the Interior, a copy of the complaint shall be served by appellant upon the General Counsel for that agency. All such service shall be made in accordance with § 4.117. Should the complaint not be received within 30 days, appellant's claim and appeal documents may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth a complaint and the Department counsel will be so notified.

(b) *Answer.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the Department counsel shall prepare and file with the Board an original and one copy of an answer thereto, setting forth simple, concise, and direct statements of the Government's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and

shall set forth any affirmative defenses or counterclaims, as appropriate. One copy of the answer will be served by the Department counsel upon the appellant in accordance with § 4.117. Should the answer not be received within 30 days, the Board, may, in its discretion enter a general denial on behalf of the Government, and the appellant shall be so notified.

### § 4.108 Amendments of pleadings or record.

(a) The Board may, in its discretion, upon its own initiative or upon application by a party, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the appeal file, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such circumstances motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or said appeal file (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal: *Provided, however,* That the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

### § 4.109 Hearing—election.

Within 15 days after the Government's answer has been served upon the appellant, or within 20 days of the date upon which the Board enters a general denial on behalf of the Government, notification as to whether one or both of the parties desire an oral hearing on the appeal should be given to the Board. In the event either party requests an oral hearing, the Board will schedule the same as hereinafter provided. In the event both parties waive

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an oral hearing, the Board, unless it directs an oral hearing, will decide the appeal on the record before it, supplemented as it may permit or direct. A party failing to elect an oral hearing within the time limitations specified in this section may be deemed to have submitted its case on the record.

#### §4.110 Prehearing briefs.

Based on an examination of the appeal file, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to §4.109. In the absence of a Board requirement therefore, either party may, in its discretion, and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall be furnished simultaneously to the other party.

#### §4.111 Prehearing or presubmission conference.

Whether the case is to be submitted without a hearing, or heard pursuant to §§4.118 through 4.123, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a member or hearing officer of the Board for a conference to consider:

- (a) The simplification or clarification of the issues;
- (b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;
- (c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
- (d) The possibility of agreement disposing of all or any of the issues in dispute; and
- (e) Such other matters as may aid in the disposition of the appeal.

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Any conference results that are not reflected in a transcript shall be reduced to writing by the Board member or the hearing officer. This writing shall thereafter constitute part of the record.

#### §4.112 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the Board record, as settled pursuant to §4.114. Such waiver shall not affect the other party's rights under §4.109. In the event of such election (see the time limitations for election in §4.109), the submission may be supplemented by oral argument (transcribed if requested) and by briefs.

#### §4.113 Optional small claims (expedited) and accelerated procedures. (See §4.100(a)(2).)

(a) The procedures set forth in this rule are available solely at the election of the appellant.

(b) *Elections to utilize small claims (expedited) and accelerated procedure.* (1) In appeals where the amount in dispute is \$10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring a decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (c) of this section. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(2) In appeals where the amount in dispute is \$50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (d) of this section.

(3) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made either in the notice of appeal or by other written notice at any time thereafter.